

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

FRIENDS OF PIERCE COUNTY, et al., CITY
OF BONNEY LAKE, and MARILYN
SANDERS, et al.,

Petitioners,

v.

PIERCE COUNTY,

Respondent

and

ORTON FARMS, et al., CITY OF SUMNER,
BETHELL SCHOOL DISTRICT, PUYALLUP
SCHOOL DISTRICT, and FORTERRA NW,

Intervenors,

and

WASHINGTON SUSTAINABLE FOOD AND
FARMING NETWORK, et al.,

Amicus

CASE NO. 12-3-0002c

(Friends of Pierce County)

**ORDER DENYING INTERVENTION AND
DENYING RECONSIDERATION**

By Final Decision and Order (FDO) issued July 9, 2012, the Board decided challenges to several discrete amendments to Pierce County's comprehensive plan. On July 19, 2012, Intervenor Bethel School District filed a motion for reconsideration of the portion of the Final Decision and Order concerning Amendment M-3. Respondent Pierce County filed a brief in joinder. On July 30, 2012, Petitioners Marilyn Sanders, et al. filed an answer to the motion. On August 6, 2012, Bethel filed a Reply.

1 Friends of Pierce County, et al., Orton Farms, et al., and City of Sumner are parties to the
2 portion of the case concerning Amendment U-3a. Petitioners Friends of Pierce County
3 submitted a motion to intervene or for amicus status with a brief in answer to the
4 reconsideration motion. Orton Farms and the City of Sumner then filed motions to intervene
5 contingent on the Board's grant of intervention or amicus status to Friends of Pierce
6 County.¹
7

8 MOTIONS FOR INTERVENTION

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10 Motions for intervention, or alternatively, amicus, filed by Friends, Orton, and Sumner
11 address primarily the application of multi-county planning policies (MPPs) to the
12 amendments ruled non-compliant in the FDO. Because Bethel and the County allege
13 misinterpretations of law and ask for reconsideration of the FDO application of the MPPs to
14 Amendment M-3, the parties to the Amendment U-3a matter request an opportunity to
15 comment as well.
16

17 WAC 242-03-270 entitled "Intervention" provides as follows:

- 18 (1) Upon motion, any person may request status as an intervenor in a case.
19 The motion shall state the applicant's interests relating to the subject of
20 the action, how disposition of the action may impair that interest, and
21 whether that interest is adequately represented by existing parties. The
22 motion shall specify the legal issue(s) in the case which the intervenor
23 seeks to address and may not raise new issues beyond the issues
24 already in the case. The applicant should make an effort to contact the
25 parties so that the motion may be filed without objection. The motion to
26 intervene shall be filed at least ten days prior to the deadline for filing the
27 petitioner's prehearing brief, unless good cause is shown.

28 ¹ Motions and briefs in intervention were filed as follows:

- 29 • Friends of Pierce County, et al., Motion to Intervene or Alternatively Amicus Status (July 30, 2012).
30 • Friends of Pierce County, et al., Answer to Bethel School District's Motion for Reconsideration (July
31 30, 2012).
32 • City of Sumner's Objection to Petitioners Friends, et al. Motion to Intervene and Intervenor City of
Sumner's Motion to Intervene (August 3, 2012).
• Intervenor Orton's Motion to Intervene or Alternatively for Leave to File Amicus (August 1, 2012).
• Intervenor Orton's Reply on School District's Motion for Reconsideration (August 6, 2012).

1 (2) In determining whether a person qualifies as an intervenor, the
2 presiding officer shall apply any applicable provisions of law and may
3 consider the applicable superior court civil rules (CR) of this state. The
4 granting of intervention must be in the interests of justice and shall not
5 impair the orderly and prompt conduct of the proceedings.

6 Applying the intervention factors in the Board's rules, the Board finds:

- 7 1. Friends are petitioners in GMHB Case No. 12-3-0002c who prevailed on some
8 elements of their challenge to Amendment U-3a. The FDO addressed the
9 question of the application of MPPs to Amendment U-3a as well as to
10 Amendment M-3.
- 11 2. Disposition of Bethel School District's motion for reconsideration might impair
12 Friends' interests if the Board were to change its decision concerning the
13 application of MPPs.
- 14 3. Orton and Sumner did not prevail in the Amendment U-3a matter. They request
15 an additional opportunity to brief the application of MPPs if Friends are granted
16 intervention.
- 17 4. Friends have professional legal staff with specific expertise in the Growth
18 Management Act. Friends' interests are not adequately represented by the
19 Sanders *pro se* petitioners.
- 20 5. Orton and Sumner have interests somewhat different than the County's. The
21 County in this matter is generally deferring legal briefing and argument to the
22 interested parties.
- 23 6. Friends' request for intervention is narrowly directed at the question of the
24 application of multicounty planning policies and raises no new issues. Orton and
25 Sumner seek to address only the same narrow questions. To the extent new or
26 broader questions are raised, they must be stricken.
- 27 7. Good cause is shown for the late applications. Friends' post-FDO application for
28 intervention is based on averting an inconsistent ruling upon reconsideration of
29 the FDO. Orton's and Sumner's late applications are a response to Friends.
30 However, Friends, Orton and Sumner each had ample opportunity to brief and
31 argue the matters prior to issuance of the FDO.
32

1 8. Granting intervention would impair the orderly and prompt conduct of the
2 proceedings by allowing re-briefing of issues.

3 9. Granting intervention is not in the interests of justice.

4 Each of the parties to the Amendment U-3a dispute had ample opportunity to brief and
5 argue the question of application of the MPPs to their issues of ARL de-designation and
6 UGA expansion for commercial capacity.² The requests for post-FDO intervention are
7 attempts to bolster legal arguments that could have been made and, in some cases, were
8 already made, in the pre-hearing briefs.³ As such, a grant of intervention for reconsideration
9 would simply allow a second bite of the apple, impairing the orderly and prompt conduct of
10 the proceedings.⁴
11

12
13 Further, as summarized below, the FDO recognizes that the MPPs are cited by petitioners
14 in relation to both Amendments U-3a and M-3, and that the treatment must be consistent.
15 However, none of the FDO findings of non-compliance rests on MPP provisions standing
16 alone. Thus intervention on this issue is not required to serve the interests of justice.
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19 The motions for intervention are **denied**.

20 21 MOTION FOR RECONSIDERATION

22 Intervenor Bethel School District and Respondent Pierce County move for reconsideration
23 of the Board's remand of Amendment M-3, which re-designated rural land to a land category
24 that allows middle and high schools as a conditional use.
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26 WAC 242-02-832(2) provides:
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29 ² Indeed, the County's staff record is replete with VISION 2040 consistency analysis. See, e.g., CP #35-2, Staff
30 Report (June 22, 2011), at 101. See also VISION 2040 consistency analysis in Sumner's Draft EIS Section 3.9
31 and Final EIS Appendix G.

32 ³ See Friends Prehearing Brief at 25-26, 31; Friends Reply, at 32; Orton Brief, at 32-33; Sumner Brief at 21-22,
citing VISION 2040 consistency analysis in Sumner's EIS *supra*.

⁴ "A motion for reconsideration is not simply an opportunity to reargue a case." *Suquamish II v Kitsap County*,
CPSGMHB Case No. 07-3-0019c, Order on Motion for Reconsideration (Sep. 13, 2007), at 3; *Petso v City of*
Edmonds, CPSGMHB Case No. 09-3-0005, Order Denying Reconsideration (Sep. 4, 2009) at 2-3.

1 A motion for reconsideration shall be based on at least one of the following
2 grounds:

- 3 (a) Errors of procedure or misinterpretation of fact or law, material to the
4 party seeking reconsideration;
5 (b) Irregularity in the hearing before the board by which such party was
6 prevented from having a fair hearing; or
7 (c) Clerical mistakes in the final decision and order.

8 Bethel and the County base their motion on alleged misinterpretation of law, specifically:

- 9 (a) Misapplication of the MPPs;
10 (b) Misapplication of the CPPs; and
11 (c) Disregard of the School District's statutory and constitutional authority.
12

13 Upon review of the FDO in light of the various post-hearing filings, the Board finds no
14 misinterpretation of law requiring reconsideration. In denying the motion to reconsider, the
15 Board briefly addresses the moving parties' primary arguments.
16

17 Application of MPPs

18 The FDO lays out the GMA statutory provisions that require consistency in planning.⁵ The
19 controlling GMA principle is that County comprehensive plan amendments must be
20 consistent with applicable comprehensive plan criteria, including sub-area plans where
21 applicable, and with Countywide Planning Policies.
22

23 The FDO in a prefatory note describes VISION 2040 and the MPPs as the locus of the
24 "regional differences" for which the GMA requires recognition.⁶ The note references the
25 Puget Sound Regional Council's statutory authority to coordinate land use and
26 transportation planning in the metropolitan area.⁷ The FDO prefatory note relies on WAC
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29 ⁵ See, e.g., FDO at 105-106.

30 ⁶ FDO at 10, citing RCW 36.70A.011, RCW 36.70A.050(3), RCW 36.70A.190(4)(b): "VISION 2040 reflects the
31 unique demographics, shared geography, interlinked transportation, and economic dynamism of the central
32 Puget Sound region."

⁷ FDO, at 10, n.29, citing chapter 47.80 RCW; FDO at 12-13. Note that PSRC is tasked with certifying the
consistency of transportation elements of local city and county comprehensive plans and county-wide planning
policies with the regional vision. RCW 47.80.023(3) and (4); RCW 47.80.026.

1 365-196-305 and *King County v. Central Puget Sound GMHB*, to suggest directive MPPs
2 may be read to have binding effect.⁸

3
4 However, in deciding the substantive challenges to Pierce County's adoption of Amendment
5 U-3a and M-3, where the FDO found non-compliance, the decision was based on violation
6 of Pierce County's comprehensive plan policies or Countywide Planning Policies, not on
7 MPPs standing alone.

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9 Thus, in addressing ARL de-designation, the FDO relied primarily on Pierce County
10 comprehensive plan criteria at PCC 19A.30.070.B and D.⁹ The FDO stated: "[T]he cited
11 MPP ..., while *not creating an independent basis for a finding of non-compliance* for
12 Amendment U-3a, *confirm* the Board's definite and firm conviction that a mistake has been
13 made"¹⁰ (emphasis added).

14
15 In addressing UGA expansion for commercial capacity, the FDO found non-compliance with
16 Pierce County comprehensive plan criteria at PCC 19A.30.010.H.1.b.¹¹ The FDO
17 subsequently stated the inconsistency between the County's action and VISION 2040 UGA-
18 containment imperatives "*provides further support*" to the Board's finding of non-
19 compliance.¹²

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24 ⁸ FDO at 11-12, citing WAC 365-196-305 (MPPs are "a framework that ensures consistency...") and *King*
25 *County*, 138 Wn.2d 161, 175-176 (applying "framework to ensure consistency" in CPP context)..

26 ⁹ FDO, at 48-49.

27 ¹⁰ FDO, at 60: "The Board views VISION 2040 as articulating the "regional differences" that characterize
28 growth planning for the four-county Puget Sound region. Pierce County's Countywide Planning Policies as
29 adopted by the County and its cities are an expression of "local circumstances" in the County.... MPPs and
30 CPPs cannot be ignored, particularly when their provisions are directive.

31 The Board agrees ... that neither MPP-DP-31 nor the cited CPPs can be read as an absolute prohibition of de-
32 designation of ARL lands, in view of the designation amendment provisions in the Commerce minimum
guidelines, County Policies, and case law. However, when weighing the ARL designation factors, the MPPs
require a Central Puget Sound county – and the CPPs require Pierce County – to put a heavy thumb on the
balance scale in favor of continued designation for prime farmland."

¹¹ FDO at 73.

¹² FDO, at 86: "The Board concludes the inconsistency between the County's action in adopting Amendment
U-3a and C-5 and the UGA-containment imperatives of the VISION 2040 Multicounty Planning Policies
provides further support to the Board's remand of these amendments to the County."

1 As to school facilities, the FDO found non-compliance with Pierce County CPP Education
2 Policies 3, 3.3, 5, 5.1, and 5.2,¹³ stating: “[T]he CPPs are directive: the County *shall*
3 *determine siting requirements* for schools, *locating schools* consistently with the local
4 comprehensive plan and *deciding all facility locations*, types and sizes.”¹⁴ The FDO
5 weighed the facts in the record and concluded Petitioners had met their burden of proof in
6 demonstrating the County failed to act in accordance with its own policies.¹⁵ Thus neither
7 the identified MPPs nor the applicable sub-area plans stand alone as bases for remand of
8 Amendment M-3 to the County.¹⁶

10
11 While the FDO did not apply the MPPs as a stand-alone basis for any finding of non-
12 compliance, the decision clearly recognized that the County has incorporated a requirement
13 for consistency with VISION 2040 into its comprehensive plan amendment process.¹⁷ It
14 was not error of law for the FDO to apply the County’s own adopted criteria.

15 16 Application of CPPs

17 Pierce County alleges an error of law in that the Countywide Planning Policy amendments
18 responsive to the VISION 2040 MPPs had not been fully ratified at the time Amendment M-3
19 was adopted; therefore changes to CPP Education Policies incorporating new MPPs were
20 not yet effective.¹⁸

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24 ¹³ FDO, at 119-120.

25 ¹⁴ FDO, at 122, citing CPP, at 23.

26 ¹⁵ FDO, at 123.

27 ¹⁶ FDO, at 122: “Reviewing the adopted school siting provisions at each level from VISION 2040 down to the
28 community plans, the Board finds Pierce County has assumed a responsibility for ensuring school facility
29 locations are consistent with the County’s growth plans. The Multi-county Planning Policies, the 2009
30 Countywide Planning Policies, and the Parkland-Spanaway-Midland and Frederickson Community Plans,
31 require the County to engage with school districts in planning for school locations; it is not enough to say the
32 County will impose conditions on a school district’s subsequent permit application.”

FDO, at 128: “The Board finds Amendment M-3 provides a rural location for a multi-school campus to serve
urban students in violation of the directive policies on VISION 2040, Pierce County CPPs, and the Parkland-
Spanaway-Midlands and Frederickson Community Plans which require the County to ensure school locations
are consistent with GMA plans.”

¹⁷ See, e.g., FDO, at 12, citing CP #35-2, Staff Report (June 22, 2011), at 101. Note also Sumner’s VISION
2040 consistency analysis in its EIS.

¹⁸ Pierce County Joinder in Motion for Reconsideration, July 19, 2012, at 3-4.

1 The FDO "takes official notice" of the County's adoption of Ordinance 2011-34s, approving
2 and forwarding to the cities for ratification proposed CPP amendments to achieve
3 consistency with VISION 2040. However, the FDO specifies: "This order **does not rely** on
4 the specific amendments attached to Ordinance 2011-34s because they have not been
5 ratified."¹⁹ Throughout the FDO, therefore, when referencing CPPs, the 2009 text is cited.
6 The FDO's recognition of Ordinance 2011-34s but reliance on the unamended 2009 CPPs
7 is not a misinterpretation of law.
8

9
10 The FDO does not dictate how the County should implement its educational facilities
11 policies. The FDO simply points out that, on their face, the 2009 CPPs require something
12 more than merely conditioning permit applications facilitated by site-specific rezones.²⁰
13

14 School District's Statutory and Constitutional Authority

15 Bethel and the County both note the School District's independent statutory and
16 constitutional authority. The FDO states: "The Board's decision addresses only the action of
17 the County in adopting Amendment M-3 without first acting in accordance with its policies.
18 The Board recognizes Bethel School District has distinct authority in operating and
19 managing public education, including property acquisition, pursuant to statutes that are not
20 within the Board's jurisdiction."²¹
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22
23 City and County comprehensive plans of necessity include processes and criteria for
24 provision of public facilities and services by agencies with distinct statutory missions.²² A
25 plan amendment may be remanded by the GMHB where the City or County's action fails to
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28 ¹⁹ FDO, at 13, and n.39.

29 ²⁰ King County's School Siting Task Force Final Report and Recommendation (March 31, 2012) was
30 completed too recently to be a part of the record in this case. The parties are undoubtedly aware of the report
31 and perhaps of other processes in the region.

32 ²¹ FDO, at 128, n.357.

²² RCW 36.70A.030(12),(13), (17, and (18) define "public facilities," "public services," "rural services," and
"urban services" to include services frequently provided by agencies other than counties or cities: water
systems, sanitary sewer systems, fire protection, schools, public utilities. RCW 36.70A.070(4) and (6)(iii)(A)
require coordination with electrical, telecommunications, and natural gas utilities, as well as general aviation
airports and state-owned transportation facilities.

1 ensure that its growth management plans and the service-provision plans of these
2 independent agencies are coordinated.²³ The FDO's remand of Amendment M-3 to the
3 County was not a misinterpretation of law.

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5 The motion for reconsideration is **denied**.

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7 **ORDER**

- 8 • Motions to intervene or, alternatively, for amicus status, filed by Friends of Pierce
9 County, et al., Orton, and City of Sumner, are **denied**.
10 • Bethel School District's Motion for Reconsideration and Pierce County's Joinder are
11 **denied**.
12

13 Dated this 20th day of August, 2012.
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16 _____
Margaret Pageler, Board Member

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18 _____
William Roehl, Board Member

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20 _____
Raymond Paoella, Board Member
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23 **Note: This is a final decision and order of the Growth Management Hearings Board**
24 **issued pursuant to RCW 36.70A.300.**²⁴
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26 ²³ See e.g., *Governors Point, et al. v. Whatcom County*, GMHB Case No. 11-2-0010c and 05-2-0013c, Final
27 Decision and Order and Order Following Remand (Jan. 9, 2012), at 142-143 (remand to County for failure to
28 coordinate with water districts, rural water associations, and City of Bellingham as water wholesaler, and for
29 failure to coordinate with fire districts); *Suquamish II v Kitsap County*, CPSPGMHB Case No. 07-3-0017c, Final
Decision and Order (Aug. 15, 2007), at 23-26 (remand to County for failure to coordinate with sanitary sewer
service providers).

30 ²⁴ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
31 parties within ten days of mailing of the final order. WAC 242-3-830(1), -840.
32 A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days
as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent
upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings
Board is not authorized to provide legal advice.